

**RE-
HEARING
IS
DENIED**

FRANK BY COURT

Supreme Tribunal
Refuses by

Unanimous Vote to
Repon

Appeal From
Conviction for

Murder of Mary Phagan

CONLEY ASKS NEW
TRIAL

AS ACCESSORY TO
CRIME

Authority on Law Says
Trial

of Conley as Aide to
Frank

Does Not Immune
Sweeper

By a unanimous decision rendering on Wednesday morning the supreme court of Georgia denied the motion, filed only 24 hours before, for a re-hearing of the Leo M. Frank case. The re-hearing was asked by Attorneys Luther Z. Rosser, Reuben R. Arnold and Haas, on the ground that the supreme court had overlooked in its former decision 21 counts in the bill of exceptions.

A simultaneous development in the murder case was the filling of a motion for a new trial for Jim Conley, the negro, who on Tuesday was sentenced to 12 months in the chain gang for assisting Frank after the murder of Mary Phagan. The hearing of this motion has been set for March 15, and its filing means that Conley will not commence the serve o f his sentence until after the motion has been passed upon.

The negro Conley, when seen at the Tower on Wednesday, expressed extreme disappointment at the result of his own trial, and declared that at least if he couldn't come clear he would like to have had a fine imposed.

NO FUNDS FOR FINE.

Asked if he or his wife was in possession of money with which to pay a fine, or if he had any relatives to assist him, the negro replied that he had not.

"But my fine would have been paid," Conley added with a significant nod of his head.

The negro was told that he was probably safer in the tower or in the chain-gang than he would be at large since many people believe that he is guilty of the murder for which Frank has been condemned.

"I am not afraid," Conley asserted "and if I got loose, I would stay right here in Atlanta."

The negro appeared very much interested in the maximum and minimum fines assessed in misdemeanor cases but refused positively to tell from whom he expected to get money to pay a fine if one had been assessed instead of a straight chain-gang sentence.

CHARGES HILL ERRED.

The motion for a new trial for Conley was filed by Attorney William M. Smith, who brings the action on the ground that Judge Hill erred in not complying in full with the written request filed with him for a charge on certain specific points in the case.

While asserting that he has told the whole truth about the Frank case and the murder, and has nothing to add to that, the negro Conley asserts that he has much to tell the public, when he gets the permission of his attorney to talk. Attorney Smith refused positively to give the negro that permission.

Some attorneys hold that in the event Conley should repudiate his story told on the stand, or some new evidence, pointing to him and clearing Frank, is discovered, that he could not be tried for the murder, since he has already been tried as an accessory.

However, several well-known attorneys and the Fulton County court authorities hold the opinion that the negro could be tried for murder despite his conviction on the charge of being an accessory. From the opinions gathered from attorneys by The Journal on Wednesday there is no doubt that in event of a confession by Conley of the discovery of evidence exonerating Frank and showing the negro guilty that he would be tried.

Of course, should the negro ever face a jury for murder, his defense would argue that his liberty has already been in jeopardy because of the same trans-

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**REHEARING
DENIED**

**L. FRANK BY
COURT;**

**JUSTICES
ALL AGREE**

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action, but that would not stop a trial in the superior court for the crime.

SUPREME COURTS DECISION.

In refusing a rehearing to Frank the supreme court handed down an opinion which covered but one page of type-written paper. Its full text follows:

Frank vs. State.

On motion for a rehearing.

The motion for a new trial contained 103 grounds. To have discussed

each of them separately would have unduly prolonged an opinion already necessarily of considerable length. So likewise to deal with each of the grounds of the application for a rehearing in detail would serve no useful purpose. Suffice it to say that the matters set out in the motion for a rehearing were not overlooked in making the decision, but were carefully considered and passed upon, though all of them were not discussed at length. While the difference of opinion among the members of the court as to certain questions, which appears from the opinion and the dissenting opinion filed, still exists, the court is unanimous in overruling the application for a rehearing.

Motion overruled.

Following the action of the supreme court in denying so quickly the motion of the Frank defense for a rehearing of his case, interest centers in the next move in his fight for life.

NEXT MOVE BY FRANK.

While his attorneys refuse to discuss the case there is little doubt that the next move will be an extra ordinary motion for a new trial, which will be brought before Judge Ben H. Hill, of the criminal division of the superior court.

The motion will be based upon the statement of Dr. H. F. Harris that in his opinion the hair found on the lathe was not that of Mary Phagan, and upon the statement of Albert McKnight that he perjured himself when he took the witness stand against Frank. The defense is said to be in possession of affidavits from

other state's witnesses in the case, who have repudiated their testimony.

The extraordinary motion can be filed at any time before the execution of Frank.

TO SUPREME COURT AGAIN.

In the event the extraordinary motion is denied by Judge Ben H. Hill, the defense will naturally ask an appeal to the supreme court on his decision. In such a case it is within the province of the superior court judge, if he does not consider the motion meritorious, to refuse to grant a bill of exceptions. In this event the attorneys could go to the supreme court and ask a writ of mandamus to force the judge to grant the bill of exceptions. While cases of this sort have been frequent, the supreme court has never issued a writ of mandamus, requiring a superior court judge to sign a bill of exceptions.

The remittitur of the supreme court in the Frank case will reach the superior court on Friday. At any time after that he can be arraigned before Judge Hill and resented. It is generally expected that during the early part of next week the solicitor general will order Frank brought into court, and the convicted man will again hear the judge sentence him to pay the extreme penalty.
